

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

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In the Matter of the Arbitration between

**RAILROAD DEVELOPMENT CORPORATION**  
Claimant

and

**REPUBLIC OF GUATEMALA**  
Respondent

**ICSID CASE No. ARB/07/23**

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**PROCEDURAL ORDER No. 2**  
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**MEMBERS OF THE TRIBUNAL**

Dr. Andrés Rigo Sureda, President  
Honorable Stuart E. Eizenstat, Arbitrator  
Professor James Crawford, Arbitrator

**DATE:** January 6, 2009

**Considering that:**

1. By Procedural Order No. 1 the Tribunal invited the Parties to propose, jointly and by December 8, 2008, a calendar for the filing of the pleadings on the merits.
2. The Parties requested an extension of such deadline to December 15, 2008, and the Tribunal granted the requested extension.
3. On December 15, 2008, the Parties submitted a partial agreement on procedural matters and set forth the issues on which they continue to disagree. A further exchange of communications on such issues took place on December 18 and December 23, 2008.
4. The Parties have failed to agree:
  - (a) on whether preliminary objections should be granted a separate procedural phase and, if so, whether the Tribunal should decide now a schedule for such jurisdictional phase or wait until after such objections have been raised,
  - (b) on whether the Parties should receive an equivalent amount of time to prepare the first round of their submissions,
  - (c) on whether the Parties should engage in a preliminary exchange of documents available to each and on which each intends to rely prior to the presentation of Claimant's Memorial, and
  - (d) on whether the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration ('IBA Rules') shall govern evidentiary issues as these arise during the course of the merits proceedings.
5. The Parties have also failed to agree on whether depositions can be ordered in this arbitration but it follows from the Parties' exchanges on pending matters that the Tribunal does not need at this juncture to decide this issue.

6. Claimant has proposed May 24, 2009 as the deadline for the submission of its Memorial and Respondent does not object to such date, but the Parties have failed to agree on the number of weeks as from that date that Respondent should have to prepare its Counter-Memorial: Claimant considers a twelve-week period adequate; Respondent considers that such a period would be inequitable and that it should have a twenty-week period, which would be commensurate to that afforded to the Claimant starting from the date of the Decision on Jurisdiction to May 24, 2009 should this be the deadline established by the Tribunal for the submission of the Memorial.

7. It is an essential requirement of arbitral procedure that the Tribunal affords each Party an equal opportunity to prepare and present its case.

8. Claimant has argued in favor of an exchange of evidentiary documents prior to the presentation of its Memorial because, if such exchange takes place later, Respondent will have knowledge of the documents on which Claimant has relied. The Tribunal is not persuaded by this argument because, in such an early exchange, Respondent would need to produce documents without knowledge of their relevance to the arguments yet to be advanced by Claimant.

9. Unless otherwise agreed by the Parties, the Tribunal is obliged to conduct the proceeding in accordance with Section B of Chapter Ten of CAFTA, Section 3 of Chapter IV of the ICSID Convention and the ICSID Arbitration Rules, and under Article 43 of the ICSID Convention the Tribunal may at any stage of the proceedings call upon the Parties to produce documents or other evidence, and under ICSID Arbitration Rule 34 the Tribunal is the sole judge of evidence admissibility and its probative value.

**Therefore:**

The Tribunal has decided:

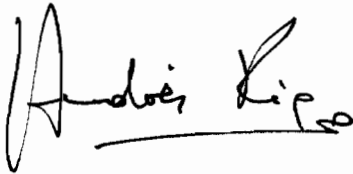
1. To accept the procedural calendar agreed by the parties.

2. That Respondent shall inform the Tribunal and Claimant of any intention to raise preliminary objections not later than two weeks after the date of submission of Claimant's Memorial.
3. That the Parties shall:
  - (a) exchange document requests no later than four weeks after the submission of Respondent's Counter-Memorial,
  - (b) exchange, for each document requested, statements of agreement to provide the documents requested or specific objections no later than two weeks after the date of the exchange of requests to produce documents,
  - (c) simultaneously produce documents to which no objection has been made no later than four weeks from receipt of the statements of agreement to produce them, and
  - (d) in case the Parties are unable to resolve objections to the production of documents, either Party may, not later than a week after the exchange of documents, request that the Tribunal order the production of those documents.
4. That Claimant shall present its Reply no later than eight weeks from the deadline set by the Tribunal for any remaining production of documents, or, if the Tribunal orders no further document production, Claimant shall present its Reply eight weeks from such decision.
5. That Respondent shall present its Rejoinder no later than twelve weeks after the submission of Claimant's Reply.
6. That it is premature for the Tribunal to decide now procedural matters related to future preliminary objections and that, if and when such objections are presented by the Respondent, the Tribunal will decide in

light of such objections and the applicable provisions of CAFTA whether a separate jurisdictional phase is mandatory or appropriate, and establish the schedule for submissions after consultation with the Parties.

7. To establish May 24, 2009 as the deadline for submission of the Memorial by the Claimant, 157 days after issuance of its Decision on Jurisdiction.
8. To establish October 11, 2009 as the deadline for submission of the Counter-Memorial by Respondent, 140 days after submission of the Memorial.
9. To evaluate evidentiary requests, the admissibility of evidence and its probative value in accordance with the ICSID Convention, the Arbitration Rules.

On behalf of the Arbitral Tribunal

A handwritten signature in black ink, appearing to read "Andrés Rigo Sureda". The signature is written in a cursive style with a horizontal line underneath the name.

Dr. Andrés Rigo Sureda  
President